

**EXTENDED AND SECOND RESTATED AGREEMENT BETWEEN  
CITY OF SUNNYVALE  
AND  
BAY COUNTIES WASTE SERVICES, INC.  
FOR SOLID WASTE COLLECTION AND RECYCLING**

THIS AGREEMENT was made and entered into as of the first day of December, 1997, and is extended, amended and restated as of the \_\_\_\_ day of \_\_\_\_\_, 2004 by and between City of Sunnyvale, a municipal corporation of the State of California (hereinafter "City") and Bay Counties Waste Services, Inc., a California corporation, D.B.A. Specialty Solid Waste and Recycling (hereinafter "Contractor"). The extension, amendment and restatement of this Agreement does not constitute a re-dating of the entire Agreement, and unless provisions in this Agreement are specifically qualified by reference to the date of amendment and restatement of this Agreement, their date refers to the date of original execution of this Agreement.

**RECITALS**

This Agreement is entered into with reference to the following facts and circumstances that are found and declared by City:

A. City and Contractor are parties to this Agreement for the Collection of Solid Waste between City and Specialty Garbage and Refuse Service, Inc. dated July 24, 1990 (the "Franchise Agreement"),

- (1) as assigned to Contractor and amended by a Consent and First Amendment dated as of December 17, 1992,
- (2) as further amended by a Second Amendment dated as of January 11, 1994, a Third Amendment dated as of November 9, 1994, a Fourth Amendment dated as of December 19, 1995, a Fifth Amendment dated as of April 23, 1996, and a Sixth Amendment dated as of June 19, 1996, and
- (3) as restated by a Restated Agreement dated as of December 1, 1997.

B. This Extended and Second Restated Agreement restates in its entirety all prior versions of the Franchise Agreement effective as of the date hereof, unless otherwise provided in this Second and Second Restated Agreement

C. The provision of adequate and reliable solid waste collection and disposal is essential to the health, safety and well-being of residents of City.

D. The State of California has found and declared that the rapidly increasing volume of solid waste resulting from population growth, industrial expansion and other factors requires an organized and comprehensive approach to solid waste management.

E. As an essential part of the State of California's comprehensive program for solid waste management, the State has declared that it is in the public interest for local governmental agencies to make adequate provision for solid waste handling, including the promotion of recycling and reuse of materials which would otherwise be disposed of in landfills.

F. The City Council concurs in the aforementioned findings and declarations of the State of California, which it finds to be applicable to the conditions prevailing within the City.

G. The State of California has recognized in Public Resources Code Section 40059 that City may determine all aspects of solid waste handling which are of local concern, including frequency of collection, methods of collection and transportation, level of services, charges and fees, and has declared that City may determine whether any such services are to be provided by means of exclusive or non-exclusive franchises, contracts, licenses, permits or other means, and that City may grant to others authorization to provide solid waste handling services under such terms and conditions as City may prescribe.

H. The City Charter, Article XVI, authorizes the City Council to grant by ordinance a franchise for furnishing City and its inhabitants garbage, waste and refuse removal up to a term of 30 years, Section 8.16.070 of the Sunnyvale Municipal Code requires the City Council to provide for the collection of garbage, waste and refuse within the City by the issuance of one or more franchises or licenses to disposal service operators upon terms and conditions to be established in the applicable franchise or license.

I. The City desires that a thorough, competent and qualified solid waste handling company provide the highest

quality of solid waste collection for the City residents and businesses. To that end, City solicited proposals from solid waste handling companies to provide solid waste collection services of the type described in this Agreement pursuant to a franchise which is exclusive to the extent provided in this Agreement.

J. The City Council has determined that an exclusive franchise for the collection of solid waste, the scope of which is described in this Agreement, is an appropriate means of providing for the efficient and orderly collection of solid waste. The City Council has evaluated all proposals submitted and has determined that Contractor has proposed to provide such services in a manner and on the terms which are in the best interest of City and its residents, taking into account the qualifications and experience of Contractor in the collection of solid waste and the cost of providing such services.

K. On November 11, 2003, the City Council approved as follows:

(1) **Depreciation of Trucks and Equipment:** Approve in concept extending depreciation for Contractor trucks and equipment to 10 years from 7 and 5 years, respectively (as provided in Section III(4)b of Exhibit [8.03A2A]); and

(2) **Extend Term of Refuse Collection Contract to 27 Years:**

Direct the City Manager to negotiate and return to Council a contract amendment with Bay Counties Waste Services that;

Accepts Contractor's proposal to extend the term of this Agreement to 27 years (as provided in Section 4.02) and lengthen the depreciation of trucks and equipment to 10 years (as provided in Section C4b of Exhibit 8.03A), with City to realize 50% of the resulting savings (as evidenced by payment from Contractor to City simultaneously with the execution of this Extended and Second Restated Agreement of \$907,389, which represents sharing 50% of the cost savings that Contractor realized by extending the depreciation of its service assets between July 1, 2002 and June 30, 2004 in conjunction with the extension of this Franchise Agreement);

Requires Contractor to submit its operations to a detailed performance review (by a consultant to be selected by City) of Contractor's operations to identify opportunities for route reductions and other efficiency

improvements (which was conducted by Brown, Vence & Associates);

Requires Contractor to pay 50% of the cost of the performance review (as evidenced by payment from Contractor to City of \$34,912.53) and to make changes to its operations that are identified by the review and approved by City (such as with respect to sale or lease of assets as provided in Section C4c of Exhibit 8.03A, reconciliation of actual / projected capitalized maintenance costs in Section C2d of Exhibit 8.03A);

Incorporates City-desired changes to the contract in the following areas:

- (1) **SERVICE STANDARDS** (such as care of private and City property in Section 5.11, minimization and cleanup of spills in Section 5.12, graffiti cleanup in Section 5.15C, employee training in Section 5.16F, compliance with City billing protocol in Section 6.01A, buy-recycled procurement in Section 6.03, public/customer service and accessibility in Section 6.05, complaint response time in Section 6.05, with respect to CNG vehicles and fueling in Section 11.08),
- (2) **ASSIGNMENT** (as provided in Section 12.05), and
- (3) **REMEDIES** (such as liquidated damages in Section 6.07 for failure to meet service standards, compensatory damages for lost franchise fees upon breach in Section 7.01E, agreed upon letter of credit assurances in Section 9.03, and implementation of City's right to perform services in Section 10.01.

L. At the City Council meeting November 11, 2003, Contractor presented the following slide:

- "Staff Concern: BCWS can be sold and the contract assumed by new owners at any time.
- Response: The City currently has the ability within the existing franchise agreement to approve or disapprove an assignment of the contract. Our two principal owners have operated in other South Bay locations for extensive periods of time under a long-term commitment philosophy. This is no different for the City of Sunnyvale. The Company, if given the opportunity, will be there for the long haul."

A representative of Contractor closed his remarks to City Council, as follows: "Would another [waste company] put their company up for sale after they got the contract? Some might . .

. South City Scavengers has been around since 1914. I'm third generation, and my kids are fourth generation. . . . We're here for the long run."

M. Nothing in this Agreement is intended to constitute a waiver or modification of the rights or obligations of either party as they may exist under the Franchise Agreement as previously amended, restated and consolidated.

NOW, THEREFORE, in consideration of the extension of the franchise and the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

#### **ARTICLE 1        DEFINITIONS**

For purposes of this Agreement, unless a different meaning is clearly required, the following terms have the following meanings:

**"Affiliate"** has the meaning provided in Section 8.07H. For the purposes of Section 7.01 of The Consent and First Amendment to Agreement between the City of Sunnyvale and Specialty Garbage and Refuse Service, Inc. for the Collection of Solid Waste dated as of the 17<sup>th</sup> day of December 1992 by and among the City, Specialty Garbage and Refuse Service, Inc., "affiliated companies" means "Affiliates".

**"Agreement"** or **"Extended and Restated Agreement"** means this contract, including all exhibits and attachments, and any amendments thereof or supplements thereto.

**"City"** means **City** of Sunnyvale, a municipal corporation, and all of the territory lying within the municipal boundaries of **City** as presently existing or as such boundaries may be modified during the Term. For purposes of the areas to be served by Contractor under this Agreement, "City" also includes unincorporated areas completely surrounded by the City of Sunnyvale, all of which are now provided solid waste collection services by Contractor under this Agreement.

**"Collection"** means (1) collection of solid waste and its transportation to the Disposal Site; and (2) collection and disposition (other than by disposal) of Recyclable Materials, as the context requires.

**"Commercial/Industrial"** means not Residential.

**"Commercial/Industrial Premises"** means Premises that are not Residential Premises or Multi-Unit Residential Premises, including all retail, commercial, industrial, government and schools.

**"Containers"** or "containers" mean receptacles for use by Waste Generators to set out Solid Waste for Collection, including Toters, cans, carts, bins, debris boxes, oil boxes and compactors, as further described in Section 5.15.

**"Contractor"** means Bay Counties Waste Services, Inc.

**"Contractor's Payment"** means Contractor's compensation determined in accordance with Section 8.03.

**"Construction Debris"** means used or discarded construction materials removed from premises during the construction or renovation of a structure.

**"Delivery"** of solid waste by a Waste Generator is deemed to occur when solid waste is deposited in a receptacle or at a location that is designated for collection pursuant to **City's** Municipal Code, or is otherwise discarded.

**"Demolition Debris"** means used construction materials removed from premises during the razing or renovation of a structure.

**"Disposal Site(s)"** means the solid waste handling facility or facilities designated by **City** for the ultimate disposal (by Contractor) of solid waste collected by Contractor, which may include the Sunnyvale Sanitary Landfill and the Transfer Station.

**"Environmental Laws"** means all federal and state statutes, county and city ordinances concerning public health, safety and the environment including:

- the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S. C. .9601 et seq.;
- the Resource Conservation and Recovery Act, 42 U.S.C. .6901 et seq.;
- the Federal Clean Water Act, 33 U.S.C. .1251 et seq.;
- the Toxic Substances Control Act, 15 U.S.C. .2601 et seq.;
- the Emergency Planning and Community Right to Know Act, 42 U.S.C. .1101 et seq.;
- the Occupational Safety and Health Act, 29 U.S.C. .651 et

seq.;

- the California Hazardous Waste Control Act, California Health and Safety Code .25100 et seq.;
- the California Toxic Substances Account Act, California Health and Safety Code .25300 et seq.;
- the Porter-Cologne Water Quality Control Act, Cal. Water Code .13000 et seq.; and
- the Safe Drinking Water and Toxic Enforcement Act, Cal. Health & Safety Code .25249.5 et seq..

**"Event of Default"** has the meaning provided in Section 11.01.

**"Fiscal Year"** or "fiscal year" means July 1 through June 30.

**"Garbage"** means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any thereof, resulting from the preparation, storage, handling or consumption of such substances.

**"Hazardous Waste"** means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code Sections 25110.02, 25115, and 25117, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

**"Household Hazardous Waste"** means hazardous waste generated at Residential Premises within the City and delivered by the Owner or occupant of such premises to a drop-off site provided or made available by **City**.

**"Medical Waste"** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified by the State of California in Health and Safety Code Section 25117.5.

**"Multi-Unit Residential Premises"** means all Residential Premises, including apartments and condominiums, which contain four or more Residential units. Mobile home parks are not Multi-Unit Residential Premises.

**"Owner"** when used in reference to Waste Generators, means

the person holding the legal title to the real property constituting the Premises to which solid waste collection service is to be provided under this Agreement.

**"Person"** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Santa Clara, and special purpose districts.

**"prompt"** or **"promptly"** and variations thereof mean as soon as possible, but not more than 2 days.

**"Premises"** means any land or building in the City where solid waste is generated or accumulated.

**"Public Information Materials"** means all materials that Contractor is required to prepare and distribute to Waste Generators under this Agreement, including:

Section 6.05.E, paragraphs 2 and 3;  
Exhibit 5.02, Section 1.02;  
Exhibit 5.02, Section 1.04D1;  
Exhibit 5.02, Section 1.04F, final 2 sentences;  
Exhibit 5.02, Section 1.04I2 and 4b.  
Exhibit 5.02, Section 1.04J7, semi-annual Yardwaste reminder;  
Exhibit 5.02, Section 1.05H; and  
Exhibit 5.02, Section 1.06E, "publicize" only, as required in first sentence.

**"rear yard"** means a location behind or beside a premise, including side yard.

**"Reasonable Business Efforts"** means those efforts a prudent business person would expend under the same or similar circumstances in the exercise of the person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that the person has undertaken to satisfy, considering that costs undertaken to satisfy that obligation are allowable costs under Article 8.

**"Recycling"** means the process of collecting, sorting, cleansing, treating and reconstituting materials which would otherwise become solid waste and returning them to the economic mainstream in the form of raw materials for new, reused or re-constituted products. The collection, transportation or disposal of solid waste not intended for, or capable of, reuse



is not Recycling. Recycling does not include use of solid waste for conversion to energy or use of solid waste as alternative daily cover at landfill.

**"Recyclable Materials"** means domestic, commercial or industrial by-products of some potential economic value, set aside, handled, packaged or offered for collection in a manner different from garbage or rubbish, specifically including:

- glass,
- paper,
- plastic,
- metal,
- Yardwaste,
- materials listed in Section 5.07, and
- as the context demands, materials included in recycling programs from time to time upon agreement of City and Contractor, such as Residential Recyclables Materials listed in Section 1.04I of Exhibit 5.02, Multi-Unit Residential Premises Recyclable Materials listed in Section 1.05C of Exhibit 5.02, Commercial/Industrial Recyclable Materials prescribed by City in accordance with Section 1.06E of Exhibit 5.02 and Institutional Recyclable Materials listed in Section 1.07B3c of Exhibit 5.02.

"Recyclable Materials" may be mixed together and not subject to Source Separation.

**"Residential"** or **"Residential Premises"** means single family, duplex, triplex and mobile home park residences, and freestanding or ground level town homes subscribing to cart or can service.

**"Refuse"** means Garbage and Rubbish.

**"Rubbish"** means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and other waste materials not included in the definition of Garbage or Hazardous Waste.

**"Service Assets"** are all of Contractor's land, fixtures, buildings, equipment, vehicles and Containers in use or storage, and other property used or useful in the collection and transportation of Solid Waste, whether

- (1) owned outright or pursuant to installment sale agreement or

- (2) leased, including right to use, possession and occupancy, as the case may be.

**"Solid Waste" or "solid waste"** means all putrescible and non-putrescible solid or semi-solid waste accumulated or delivered for collection and disposal or recycling within the City, including:

- Garbage,
  - Rubbish,
  - Construction Debris,
  - Yardwaste, and
  - Recyclable Materials,
- but excluding Hazardous Waste, Household Hazardous Waste, Medical Waste, sewage, or abandoned automobiles.

**"Source Separation", "source separated"** or other form thereof means the segregation into separate containers by the Waste Generator prior to delivery of individual components of Solid Waste, such as glass bottles, metal cans, newspapers, plastic containers, etc., for the sole purpose of Recycling.

**"Sunnyvale Sanitary Landfill"** means the closed Class III landfill owned by City, located at the intersection of Caribbean Drive and Borregas Avenue in the City.

**"Term"** means the term of this Agreement provided in Section 4.02.

**"Toters"** is a trade name for a specific brand of portable wheeled solid waste collection carts. As used in this Agreement, the term **"toters"** means the carts made by Toters' manufacturer or any substantially similar type of wheeled plastic cart.

**"Transfer Station"** means the Sunnyvale Materials Recovery and Transfer Station, located at 301 Carl Road, Sunnyvale, California, or other facility designated by City.

**"Vehicle Lease"** means the lease agreement made and entered into as of the December 16, 1997, between the City and Contractor, appended to this Agreement as Attachment 10.01.

**"Waste Generator"** means the owner or occupant of premises, including businesses, which initially produce Solid Waste.

**"Working Days"** are the days Contractor must keep its office

open in accordance with Section 6.05B.

"**Working Hours**" are the hours of collection described in Section 5.10.

"**Yardwaste**" means tree trimmings, grass cuttings, dead plants, leaves, branches and trees (not more than 6 inches in diameter) and similar materials generated at Premises.

"**Year**" or "year" means the 12-month period beginning on a July 1 and ending the following June 30.

"**Year Twelve**" means the year beginning July 1, 2002 and ending June 30, 2003.

"**Year Thirteen**" means the year beginning July 1, 2003 and ending June 30, 2004.

"**Year Fourteen**" means the year beginning July 1, 2004 and ending June 30, 2005.

## **ARTICLE 2        REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

### **2.01    Corporate Status**

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

### **2.02    Corporate Authorization**

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders if necessary) has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Contractor have authority to do so.

## **ARTICLE 3        GRANT AND ACCEPTANCE OF FRANCHISE**

### **3.01 Grant of Franchise**

City hereby extends its previous grant to Contractor of the exclusive franchise, right and privilege to engage in the business of collecting and transporting Solid Waste generated within the City and to use City streets for such purposes for the Term and within the scope set forth in this Agreement.

### **3.02 Scope of Franchise; Exclusions**

The franchise granted to Contractor is exclusive except as to the following categories of Solid Waste listed in subsections a. through k. in this Section. The granting of this franchise does not preclude the categories of Solid Waste listed in subsections a. through k. from being delivered to and collected and transported by others, provided that nothing in this Agreement is intended to or may be construed to excuse any person from obtaining any authorization from City that is otherwise required by law:

a. Recyclable Materials;

b. Yardwaste removed from a Premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service and tree trimmings, clippings, and all similar materials generated at parks, golf courses and other City maintained premises, which are collected and transported by City to the Disposal Site; and Yardwaste that is composted at the Premises;

c. *Construction Debris* or *Demolition Debris* removed from a Premise by a licensed construction contractor or demolition contractor as an incidental part of a total service offered by that contractor rather than as a hauling service;

d. Non-putrescible Solid Waste (including Rubbish) source-separated by the Waste Generator for collection and transportation by a Junk Dealer, but not as a hauling service, where a "Junk Dealer" is a person who lawfully, and in accordance with all City ordinances, collects (without charge to the Waste Generator) or purchases used articles for purposes of restoration and/or resale, including junk dealers, antique dealers, used building supply dealers and automobile salvagers, but not including a person who collects or accepts solid waste

for recycling after source separation;

e. Animal waste and remains from slaughterhouses or butcher shops for use as tallow;

f. Hazardous Waste, including Household Hazardous Waste;

g. non-hazardous waste that may pose special disposal problems because of its potential to contaminate the environment and that may be disposed of only in Class II disposal sites (or Class III disposal sites pursuant to a variance issued by the California Department of Health Services), consisting of those substances classified as "**designated waste**" by the State of California in 23 California Code of Regulations Section 2522.

h. Solid Waste which is generated at any Residential Premises and which is transported personally by the owner or occupant of such Premises to a licensed public solid waste disposal facility in a manner consistent with the City Municipal Code and other applicable laws;

i. solid waste generated by bulk food processors, including canneries and frozen food processors;

j. Medical Waste;

k. By-products of sewage treatment, including sludge, grit and screenings.

Contractor acknowledges and agrees that City may permit other persons besides Contractor to collect any or all of the types of solid waste listed above, including Recyclable Materials, without seeking or obtaining approval of Contractor under this Agreement.

To the extent that this franchise, right and privilege is exclusive, it will remain so only so long as Contractor is ready, willing and able to collect, transport and dispose of all solid waste which it is required to collect by this Agreement, in accordance with the provisions of this Agreement.

### **3.03 Term of Franchise**

The term of the franchise granted under this Agreement, as

distinct from the Term of this Agreement, is 27 years, commencing at 12:01 a.m. on July 1, 1991 and expiring at midnight June 30, 2018.

If this Agreement is terminated earlier than its expiration, the Franchise will also terminate concurrently therewith.

### **3.04 Acceptance of Franchise**

Contractor hereby accepts the franchise on the terms and conditions set forth in this Agreement.

## **ARTICLE 4 TERM OF AGREEMENT**

### **4.01 Effective Date**

The effective date of this Agreement is December 1, 1990.

### **4.02 Term**

The Term of this Agreement begins on December 1, 1990 and ends at midnight June 30, 2018.

## **ARTICLE 5 WASTE COLLECTION SERVICES**

### **5.01 General**

The work to be done by Contractor pursuant to this Agreement includes the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment do not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not.

Contractor will accomplish the work to be done by Contractor pursuant to this Agreement in a thorough and workmanlike manner so that the residents and businesses within the City are provided reliable, courteous and high-quality solid waste collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality does not relieve Contractor of the duty of accomplishing

all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in this Agreement or not.

#### **5.02 Work Specifications**

Contractor will perform all work in accordance with Exhibit 5.02.

#### **5.03 Contingency Plan**

Contractor has submitted to City a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, strikes, work stoppages and other concerted job actions, and other similar events, attached as Exhibit 5.03.

#### **5.04 Residential and Multi-Family Refuse Collection**

**A. Regular Collection.** Contractor will collect all Refuse generated at Residential Premises and Multi-Unit Residential Premises within the City and delivered for collection. Contractor will collect Refuse from such Premises at the frequencies and in the manner described in Sections 1.04 (Single-Unit dwellings) and 1.05 (Multi-Unit Residential Premises) of Exhibit 5.02.

**B. Special Collections (Spring and Fall).** Contractor will collect all Refuse generated at Residential Premises and delivered for collection at the curbside by Residential Waste Generators during 2 special collection events to be held at intervals directed by City. Special collection events will be of sufficient duration that each Residential Premises described above will be served at least 8 times per year. Contractor will conduct special collections in accordance with additional requirements, and subject to the limitations, set forth in Section 1.04D of Exhibit 5.02.

#### **5.05 Commercial/Industrial Collection**

Contractor will collect all Refuse generated at Commercial/Industrial Premises within the City and delivered for

collection. Contractor will collect Refuse from those Premises at the frequencies and in the manner described in Section 1.06 (Commercial/Industrial Collections-Bin Service and Drop Boxes) of Exhibit 5.02.

#### **5.06 City Facilities Collection; Additional Services**

Contractor will collect all Refuse generated at Premises owned and/or operated by City, at no charge to City other than as part of Contractor's Payment. Contractor will make those collections Monday through Saturday, and in cases of emergency, if requested by City, on Sunday. The facilities to be provided service initially, together with the type and frequency of service, are listed on Attachment 1.07 to Exhibit 5.02, which Attachment may be modified or expanded by City.

Contractor will provide additional solid waste collection and consulting services entailing:

- . collection of Refuse from all City-owned sidewalk and bus stop litter containers;
- . collection of refuse, beverage containers and other Recyclable Materials from special events;
- . collection of Recyclable Materials from facilities owned and operated by City, other governmental agencies and community service organizations identified in Attachment 1.07 to Exhibit 5.02.
- . collection of Refuse from litter containers in City parks, if requested by City;
- . Review of plans for new development with regard to Solid Waste service issues;

all in accordance with the standards and requirements set out in Section 1.07 (City Facilities) of Exhibit 5.02.

#### **5.07 Recycling Programs**

##### **A. Residential "Curbside" / Rear Yard Recycling.**

Contractor will collect Residential Recyclable Materials listed in Section 1.04I of Exhibit 5.02 generated at Residential Premises and a limited number of Multi-Unit Residential Premises



participating in curbside recycling, source separated and delivered for collection in authorized containers (to be provided by Contractor or, with respect to additional containers, by Waste Generators) at the curbside as of the date of this Extended and Second Restated Agreement, at the frequencies and in the manner described in Section 1.04I of Exhibit 5.02. Contractor will also collect those Residential Recyclable Materials generated at Residential Premises, source separated and delivered for collection at rear yard locations by occupants who are eligible for rear yard collection of Refuse as elderly or handicapped under Section 1.04B of Exhibit 5.02, at the frequencies and in the manner described in Section 1.04I of Exhibit 5.02.

Contractor will transport and deliver all Recyclable Materials collected to the Transfer Station or other recycling facility designated by City for subsequent processing and marketing by City. Contractor will not charge City for delivery of the collected Recyclable Materials, nor will Contractor receive any portion of the proceeds received by City from sale of the collected Recyclable Materials.

Contractor will take all steps necessary to ensure that the Residential Recycling Program achieves at least the same level of participation as that achieved by City in 1990: Contractor must collect at least 4,306 tons of Recyclable Materials each year and achieve an average level of household participation in each collection of at least 22.4 percent, provided that City does not award a contract or franchise for a competing Residential recycling program to be operated by a third party.

**B. Commercial/Industrial Recycling.** Contractor will collect corrugated cardboard and any other Commercial/Industrial Recyclable Materials directed by City from Commercial/Industrial Premises without charge to the Waste Generator in accordance with additional standards and requirements set forth in Section 1.06E of Exhibit 5.02.

Contractor will arrange for the sale or other disposition of collected corrugated cardboard, but not its disposal in a sanitary landfill, and for the revenues from such sales to be paid directly to City by the purchaser. Contractor will deliver Recyclable Materials collected pursuant to this section to the Transfer Station or other recycling facility designated by City.

**C. Multi-Unit Recycling** Contractor will separately collect Multi-Unit Residential Recyclable Materials

listed in Section 1.05C of Exhibit 5.02 from all Multi-Unit Residential Premises in the City, and deliver them, in accordance with Section 1.05C of Exhibit 5.02.

#### **5.08 Yardwaste Program**

Contractor will separately collect Yardwaste from all Residential Premises (other than mobile home parks) in the City and, if directed by City, from mobile home parks.

Contractor will deliver Yardwaste separately collected to the Transfer Station or other facility designated by City for processing.

#### **5.09 Other Solid Waste Collection Services: On-Call, Drop-Box etc.**

Contractor will provide other solid waste collection services as requested by Waste Generators in the City on an on-call basis, including drop box service, special pick-ups of bulky waste, etc., whether billed by City or Contractor.

#### **5.10 Hours of Collection**

Contractor will collect Solid Waste, including Recyclable Materials, only during hours authorized by City. Contractor may not collect Solid Waste earlier than 7:00 a.m. or later than 8:00 p.m., except as authorized in writing by the Director of Public Works.

If City amends its Municipal Code to further limit hours of operation, then the more restrictive requirement (i.e., the later start time and the earlier time after which operations will cease) controls.

#### **5.11 Collection Standards.**

**A. Care of Private and City Property.** Contractor will use due care when handling all solid waste containers. Contractor will ensure that Containers are not thrown from trucks, roughly handled, damaged or broken.

Contractor will return Containers to the collection point

upright, with lids closed and properly secured. Contractor will ensure that after providing collection service its employees close and secure all gates, doors, enclosures, container lids and (if required by Waste Generator) locks that they opened unless otherwise directed by the Waste Generator in that Waste Generator's City-approved and duly executed subscription order. Contractor will avoid crossing landscaped areas and climbing or jumping over hedges and fences.

Contractor will ensure that Contractor's employees operate Contractor's vehicles in a manner that prevents tire skidding damage to the finished pavement surfaces of City streets during routine stopping and starting to collect Solid Waste. Contractor will use cameras and other methods to detect tire skidding and will take disciplinary action against employees responsible for skid marks on private pavement or City streets.

Contractor will use Reasonable Business Efforts to prevent oil or fluids from leaking from vehicles onto pavement or streets.

City will refer complaints about damage to private property to Contractor. Contractor will repair all damage to private and public property caused by its employees.

Contractor will retrieve carts moved by others that have been reported to Contractor by the customer or City on or before the end of the next day on which Contractor must provide service in accordance with Section 5.04.

**B. Noise.** Contractor will conduct all refuse collection operations as quietly as possible and conform to any federal, State of California, County of Santa Clara and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed 75 decibels at a distance of 25 feet from the collection vehicle. City may conduct random checks of noise emission levels to ensure compliance with this standard.

## **5.12 Litter Abatement**

**A. Minimization of Spills.** Contractor will use Reasonable Business Efforts to prevent solid waste from being spilled or scattered during the collection or transportation process or fluids to leak from vehicles. If any solid waste is spilled or fluid is leaked, Contractor will, as soon as possible, but in all events within 2 Working Hours of customer's

complaint thereof or City's direction, clean up all spilled and leaked materials. Contractor will ensure that each collection vehicle carries a broom and shovel and absorbent material at all times for this purpose and train its employees in their use.

Contractor will not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle.

**B. Clean Up.** Contractor will clean up litter in the immediate vicinity of any solid waste storage area (including the areas where collection bins and debris boxes are delivered for collection) whether or not Contractor has caused the litter as soon as possible, but in all events within 2 Working Hours of customer's complaint thereof or City direction. Contractor will discuss instances of repeated spillage not caused by it directly with the Waste Generator responsible and will report such instances to City in its monthly report filed in accordance with Section 6.03. City will attempt to rectify such situations with the Waste Generator if Contractor has already attempted to do so without success.

**C. Clean Up of Illegal Dumping.** Contractor will respond to all calls from City regarding spilled or illegally dumped solid waste, including bulky materials, during Working Hours and, in emergencies, at night and on weekends. Contractor will collect and deliver such solid waste to the Disposal Site, provided it does not exceed in volume the amount which can be collected by a two-person crew in a large pick up truck or collection vehicle.

**D. Covering Loads.** Contractor will place tarps on all open debris boxes during transport to the Disposal Site. Contractor will pay fees charged Contractor by the operator of the Disposal Site for improperly covered loads or purchase of a tarp, and those fees are not allowable costs under Section 8.03.

### **5.13 Transportation and Disposal of Refuse**

Contractor will transport and deliver all Refuse collected under Sections 5.04, 5.05, 5.06 and 5.09 to the Disposal Site. Contractor will transport and deliver all Recyclable Materials collected under Section 5.07 and Yardwaste collected under Section 5.08, to the Transfer Station or other facilities respectively provided in those Sections.

City will pay all transfer and disposal fees and charges imposed by the operator of the Disposal Site, Transfer Station or other facilities on all types of Solid Waste collected by Contractor under this Agreement. Contractor will maintain accurate records of the quantities of Solid Waste (and separately itemized Recyclable Materials and Yardwaste) delivered to the Disposal Site, and Transfer Station or other facilities and will cooperate with City in any audits or investigations of those deliveries.

Contractor will cooperate with the operator of the Disposal Site, Transfer Station or other facilities with regard to operations thereat, including complying with directions from the operator to unload collection vehicles in designated areas, accommodating maintenance operations and construction of new facilities, cooperating with its Hazardous Waste Exclusion Program (HWEP), and so forth. Cooperation with the HWEP may entail inspection of up to one truckload per day, randomly selected. Costs incurred due to inspection of more than one truck per day will be allowable costs under Section 8.03, and will be included in Contractor's Payment provided for in Article 8.

In order to mitigate traffic circulation impacts and localized air quality impacts, Contractor will stagger the entry of collection vehicles into the City each day over time or over a number of different intersections. In order to reduce impacts on intersections near the Disposal Site, Contractor will disperse collection vehicle traffic to and from the Disposal Site among Mathilda Avenue, Fair Oaks Avenue and Lawrence Expressway between 6:45 - 8:15 a.m. and 3:30 - 6:15 p.m.

#### **5.14 Vehicles**

**A. General.** Contractor will provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor will have available during Working Hours on Working Days at least 1 back up vehicle for each type of collection vehicle used (including side loaders, front end loaders and roll off) to respond to complaints and emergencies. Contractor will notify City of all Contractor's proposed acquisitions of new vehicles and acquire those vehicles only following City approval.

**B. Specifications.** Contractor will register all vehicles used by Contractor in providing Solid Waste collection services with the California Department of Motor Vehicles. Contractor will ensure that collection vehicles have water-tight bodies designed to prevent leakage, spillage or overflow. Contractor will ensure that collection vehicles comply with U.S. Environmental Protection Agency noise emission regulations, currently codified at 40 CFR Part 205, other applicable noise control regulations, and will incorporate noise control features throughout the entire vehicle. Contractor will paint all vehicles uniformly in a color approved by City. Contractor will submit the specifications for all vehicles to City for approval prior to their use.

**C. Vehicle Identification.** Contractor will prominently display Contractor's name, local telephone number, and a unique vehicle identification number designated by Contractor for each vehicle on all vehicles, in letters and numbers no less than 3 inches high, on front, back and sides of each vehicle. Contractor will not place City's logo on its vehicles. Upon request by the operator of the Transfer Station, Contractor will cooperate with the operator in weighing the vehicles and displaying additional vehicle identification numbers assigned by the Transfer Station operator.

**D. Cleaning and Maintenance**

1. General. Contractor will maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

2. Cleaning. Contractor will thoroughly wash vehicles used in the collection of Solid Waste at least once every working day and thoroughly steam clean them at least once every week. City may inspect vehicles at any time to determine compliance with sanitation requirements. Contractor will make vehicles available to the Santa Clara County Health Department for inspection, at any frequency it requests.

3. Painting. Contractor will repaint all vehicles used in collection of Solid Waste at least once every year, unless (1) City determines that repainting specific vehicles at that frequency is not necessary because the vehicles' appearance is satisfactory, in which event Contractor will repaint them the following year or at such time as City determines that repainting is necessary to ensure that the

vehicles give the appearance of having been repainted within 12 months, or (2) City determines that repainting specific vehicles at a shorter frequency is necessary to ensure that such vehicles give the appearance of having been repainted within 12 months, in which event, Contractor will repaint them within 30 days' notice from City directing repainting.

4. Maintenance. Contractor will inspect each vehicle daily to insure that all equipment is operating properly. Contractor will take vehicles that are not operating properly out of service until they are repaired and do operate properly, and perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor will keep accurate records with respect to each vehicle of all vehicle maintenance, recorded according to date and mileage and will make such records available to City upon request.

5. Repairs. Contractor will repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor will obtain warranty performance. Contractor will maintain accurate records of repair, which must include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

6. Inventory. Contractor will furnish sufficient equipment to provide all service required under this Agreement, including backup collection vehicles. Contractor will furnish City a written inventory of all vehicles, including collection vehicles, used in providing service, and shall update the inventory annually. In the inventory Contractor will list all vehicles by manufacturer, ID number, date of acquisition, type, capacity and decibel rating.

7. Storage. Contractor will arrange to store all vehicles and other equipment in safe and secure location(s).

**E. Operation.** Contractor will operate vehicles in compliance with the California Vehicle Code and all applicable safety and local ordinances. Contractor will not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

## 5.15 Refuse Containers

**A. General.** Contractor will furnish, without cost to the Waste Generator, all containers for storage of Refuse and Recyclable Materials by Residential, Multi-Unit Residential, Commercial/Industrial, and all other Premises, except to the following:

- Multi-Unit Residential Premises where customers furnish their own containers,
- Commercial/Industrial customers who provide their own cans or compactors, and
- Residential customers who elect baseline service described in Section 1.01B of Exhibit 5.02 or who prefer to continue to use 32 gallon cans following the date of this Extended and Second Restated Agreement.

An inventory of Contractor's containers as well as other equipment used by Contractor in providing services as of the date of this Agreement is attached as Exhibit 5.15A. Contractor will provide **Residential Premises** with Containers for Refuse, Recyclable Materials, used oil and oil filters, and Yardwaste in accordance with Sections 1.01, 1.04I and 1.04J4, respectively, of Exhibit 5.02. Contractor will provide **Multi-Unit Residential Premises** with Containers for Refuse, Multi-Unit Residential Recyclables and used motor oil and oil filters in accordance with Sections 1.05B 1.05C3a and b, respectively, of Exhibit 5.02. Contractor will provide **Commercial/Industrial Premises** with Containers for Refuse and Recyclable Materials in accordance with Sections 1.06B and 1.06E, respectively, of Exhibit 5.02.

Contractor will notify City of all Contractor's proposed acquisitions of new Containers and will acquire those Containers only following City approval, which will be deemed given in conjunction with City's approval of Contractor's payment request documenting the proposed acquisition.

**B. Specifications.** Containers provided by Contractor for storage of solid waste must be metal or plastic, with plastic lids. They must be designed and constructed to be water tight and prevent the leakage of liquids. All containers with a capacity of one cubic yard or more must meet applicable federal regulations on refuse bin safety. All containers must be painted Contractor's standard color for that container type and must prominently display the name and telephone number of



Contractor. Contractor will obtain permission from City for changes to the standard color and for the color of any new container type.

**C. Cleaning, Painting, Maintenance.** Contractor will steam clean and repaint all Contractor-owned metal Containers at least once a year, unless (1) City determines that repainting specific Containers at that frequency is not necessary because the containers' appearance is satisfactory, in which event Contractor will repaint them the following year or at such time as City determines that repainting is necessary to ensure that the containers give the appearance of having been repainted within 12 months, or (2) City determines that repainting specific containers at a shorter frequency is necessary to ensure that such containers give the appearance of having been repainted within 12 months, in which event, Contractor will repaint them within 30 days' notice from City directing repainting. Contractor will maintain all containers in a functional condition and so as to present an attractive appearance and will refurbish them as directed by City.

Within 3 days (weekends excepted) of Contractor's observation or of City direction, Contractor will remove graffiti from its Containers, *unless* that graffiti contains obscene words or pictures, in which event Contractor will remove it within 48 hours (weekends excepted). At City's request, Contractor will give City a list of dates Containers were cleaned, painted or otherwise repaired. If requested by City, Contractor will provide City written notice of graffiti, including a description thereof within 2 days after Contractor discovers it.

**D. Repair and Replacement.** Contractor will repair or replace all Containers damaged by collection operations. If so many Containers are so severely damaged due to a common design or manufacturing defect that the frequency and type of the defect makes prompt repair or replacement not feasible using Reasonable Business Efforts, Contractor will diligently pursue with the manufacturer a remedy to the defect and will propose to City, for City's review, comment and approval, a plan that states how and when repair or replacement will occur.

## **5.16 Personnel**

**A. General.** Contractor will furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this

Agreement in a safe and efficient manner.

**B. Driver Qualifications.** Contractor will ensure that all drivers are trained and qualified in the operation of solid waste collection vehicles and have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

**C. Uniforms.** Contractor will require its drivers, and all other employees who come into contact with the public to wear clean, standardized uniforms bearing Contractor's name and an identification badge or other means of identifying the employee, all as approved by City.

**D. Safety Training.** Contractor will provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of Solid Waste or who are otherwise directly involved in collection. Contractor will train its employees involved in Solid Waste collection to identify, and not to collect, Hazardous Waste or Medical Waste.

**E. No Gratuities.** Contractor will not permit its employees to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the collection of Solid Waste under this Agreement.

**F. Employee Conduct and Courtesy; Training.** Contractor will use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor will regularly train its employees in customer courtesy, including interaction with the public, prohibit the use of loud or profane language, and instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor will take all necessary corrective measures, including transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous behavior, upon request of City, Contractor will reassign the employee to duties not entailing contact with the public while Contractor is pursuing its investigation or disciplinary process.

Contractor will additionally make review of this Agreement part of a courtesy training program that it conducts with customer

service representatives and supervisory staff in sufficient detail and frequency to ensure that they are familiar with Contractor's customer service obligations under this Agreement. Contractor will submit its courtesy training program to City within 60 days of City's initial request and thereafter promptly upon City request for review and comment and will use its best efforts to incorporate any City comments.

Contractor will train its employees in collection routing. Contractor will establish a standard route stop sequence for each residential route that conforms with Contractor's routing guidelines established in accordance with Section 1.03H of Exhibit 5.02 and require all drivers (including relief drivers) to follow that sequence. Contractor will document its training and report thereon to City monthly in its reports prepared and delivered to City in accordance with Section 6.03.

**G. Provision of Field Supervision.** Contractor will designate at least 1 qualified employee as supervisor of field operations. The field supervisor will devote at least 50% of his or her time in the field checking on collection operations, including responding to complaints.

**H. Roster of Employees.** On January 1 and on July 1 of each year of the Term, Contractor will furnish to City a complete roster of all employees providing service under this Agreement. The roster must contain the name, unique employee identification number, job classification, wage rate, and such other information as City may require.

#### **5.17 Vehicle Selection**

After consultation with and receipt of approval of City, Contractor may select the type of vehicles to be used, or change the type of vehicles previously selected, for collection of Solid Waste and Recyclable Materials for the remainder of the Term. When making recommendations, Contractor will seriously consider the advice of City and will propose vehicles that will help to promote efficiency, maintain a high level of service, reduce costs consistent with the level of service to be provided, and that will be reasonable and necessary in light of the scope of service.

### **ARTICLE 6      OTHER COLLECTION RELATED SERVICES, STANDARDS AND AGREEMENTS**

## **6.01 Billing**

**A. By City.** City will prepare, mail and collect bills for solid waste collection services provided by Contractor as a part of the municipal utility billing system. City will retain all sums it collects, and Contractor has no claim to them.

Contractor will timely comply with City's billing protocol and report to City Revenue Department both regular and special Waste Generator billable services at the scheduled time, by the means and media and in the manner prescribed in Section 1.03J of Exhibit 5.02 including additional containers that Contractor collects but that are not recorded as part of that Waste Generator's regularly scheduled service accounts.

**B. By Contractor.** Contractor will prepare, mail and collect bills for all specialized, on-call collection services provided by it which are not programmed into City's municipal utility billing system, in accordance with Sections 1.03J4 of Exhibit 5.02.

Contractor will either prepare and issue formal billings for those services or issue written receipts for services paid for in cash.

If City has established by ordinance or resolution rates for the types of service provided, Contractor will bill and collect at those rates.

## **6.02 Reports by Contractor of Billings**

Contractor will submit to City 3 copies of a written report, in a form acceptable to and approved by City, listing by date and amount all bills and cash receipts issued under Section 6.01B. Contractor will submit the report covering the immediately preceding month on or before the 5<sup>th</sup> day of each month or within 3 Working Days of City request.

City will receive full credit, against Contractor's Payment due under Article 8 for all services performed and billed by Contractor under authority of the Franchise and this Agreement. The credit is based on invoices billed and the credit risk is for account of Contractor, which is solely responsible for taking necessary steps to collect its bills. City has no

liability or responsibility for Waste Generators' nonpayment of Contractor's bills. Contractor may require prepayment or a payment deposit from customers that Contractor bills.

### **6.03 Records and Reports: Waste Collection Operations**

Each Working Day Contractor will compile and allow City access to records of its solid waste collection operations covering those aspects of its operations and in such detail as City may prescribe, including:

- (1) quantities of solid waste collected in the aggregate, and during annual cleanups
- (2) composition of solid waste collected
- (3) number of participants in the various recycling programs
- (4) number and type of accounts served by each route, including number of locations and containers collected at City and other public facilities
- (5) labor allocation information (e.g., amount of time spent on route and off-route by employee)
- (6) production data (e.g., tons of solid waste collected per route or per worker-hour)
- (7) customer complaints and similar information that City may demand in order to evaluate the effectiveness and efficiency of the customer service system and the solid waste collection and disposal program.
- (8) number of containers located in the Company's yard and changes in the inventory.
- (9) route maps, and updated maps following any significant changes.
- (10) property and personal injury damage claims and their dispositions.
- (11) any changes in permit and regulatory status at any Company facility.

(12) number of collection vehicles using CNG, diesel or gasoline fuel, together with volume of CNG usage (in therms) for Company operations and public sales.

(13) operating and maintenance costs of all rolling stock (except boom, maintenance, container and pick up trucks), bins, toters and containers for each year of their respective scheduled depreciation.

Contractor will submit a report containing the information required by City in electronic or other format specified by City at the following times:

- (1) with respect to preceding items #1, 2, and 6, monthly by the 10th day following Contractor's receipt of data from the Transfer Station,
- (2) with respect to preceding items #3-5 and 8-12, monthly by the 10<sup>th</sup> day of the following month, and
- (3) with respect to preceding items #7, monthly by the 5<sup>th</sup> day of the following month.

Contractor will prepare such other expanded or detailed reports, including reports of complaints under Section 1.03.11 of Exhibit 5.02, utilizing the information it is required to compile under this Section, which City may require.

Contractor will purchase and use paper having a minimum of 30% post-consumer fiber for reports and all other written communications. Contractor will use its Reasonable Business Efforts to purchase and use supplies having recycled content in connection with meeting its obligations under this Agreement. Contractor will further comply with City's environmental procurement policy as it may exist from time to time. For the convenience of the parties, a copy of that policy in effect as of the date of Extended and Second Restated Agreement, is attached as Exhibit 6.03. Contractor will quarterly report to City on the type and amount of paper and supplies having recycled content it has purchased during that preceding quarter.

#### **6.04 Inspection by City**

City may, but is not obligated to, observe and inspect all of Contractor's operations involved in providing services under this Agreement. In connection therewith, City may enter any of Contractor's facilities, speak to any of Contractor's employees and receive a response to any inquiries directed to such

employees, and review and make copies of (at City's expense) all of Contractor's operational and business records related to this Agreement. If City so requests, Contractor will make specified personnel available to accompany City employees on inspections.

#### **6.05 Public/Customer Service and Accessibility**

Contractor acknowledges that Waste Generators' contact with Contractor's employees by telephone is critical in establishing and maintaining good customer service, relations and satisfaction.

**A. Office.** Contractor will establish and maintain a business office for purposes of carrying out its obligations under this Agreement.

**B. Office Hours.** Contractor will keep its office open to the public from 8 a.m. to 5 p.m. Monday through Friday, 9:00 a.m. to noon on Saturdays. Contractor may close its office on Sundays and those holidays listed on Exhibit 5.02, Section 1.02.

**C. Availability of Representatives.** Contractor will make its representative available during office hours described in subsection B to communicate with the public and City in person and by telephone.

**D. Telephone.** Contractor will install and maintain a telephone system in operation at its office during office hours described in subsection B sufficient in the sole discretion of City to handle the volume of calls typically experienced on the busiest days. Contractor will keep a record of the number of calls that hang up and the time that calls are placed on hold. At any time, City may randomly check and audit lengths of hold time and hang ups. Contractor will cooperate with City's checks and audits. Contractor will install additional telephone lines, hire additional operators and make other customer service improvements as soon as possible following direction of City.

Contractor will also maintain an emergency telephone number for use during other than normal business hours. Contractor will have a representative, or an answering service to contact the representative, available at the emergency telephone number during hours when the office is closed.

Regardless of the location of Contractor's offices, Contractor will arrange for both the regular and emergency telephone numbers to be listed in all telephone directories generally distributed in the City and on all Contractor's bills and invoices.

Regardless of where Contractor's office is located, Contractor will arrange for telephone calls to it originating within the City to be billed as "local" or "toll free" calls (such as an 800 number) by all telephone companies so there is no charge to the calling party.

Contractor will establish a direct tie line between City and its office to allow City to transfer service calls received by it directly to Contractor.

Contractor will use Reasonable Business Efforts to answer all incoming calls in person, within 3 rings. Contractor will not install or use automatic answering telephone trees. Preceding and following holidays on which service is not provided that occur on a Waste Generator's regularly scheduled collection day, Contractor will provide sufficient staffing to timely handle Waste Generator's questions about holiday rescheduling.

If Contractor personnel put any Waste Generator on hold, Contractor will give that Waste Generator immediate notice of the anticipated amount of time the Waste Generator will remain on hold prior to speaking to live Contractor personnel and instruct Waste Generator to hang up and call 911 in event of an emergency. Contractor will give Waste Generators the option of leaving a message instead of waiting on hold. Contractor will not place Waste Generators on hold more than 3 minutes and use Reasonable Business Efforts to have live Contractor personnel address Waste Generators' questions within 1 minute. While Waste Generators are placed on hold, Contractor will broadcast educational announcements approved by City with respect to solid waste services and management, including recycling services and other waste diversion opportunities and programs in the City.

Contractor will respond to all Waste Generators' calls received during office hours described in subsection B prior to closing Contractor's office that day.

**E. Maps, Schedules, Consumer Information.**

Contractor will furnish City with written maps and schedules of all collection and disposal routes in accordance with Section 1.03H of Exhibit 5.02 and will update those maps and schedules



no less than once every 3 months or whenever a significant change occurs. If no change to routes has occurred and the maps and schedules do not need to be updated, Contractor will so advise City at 3-month intervals. Contractor will make maps and schedules available for inspection by the public at its business office.

In addition, Contractor will prepare information cards containing information about the amounts of solid waste that will be collected, times for special collection events, curbside recycling and household hazardous waste drop off programs, collection schedules, rates and complaint procedures. Contractor will revise and distribute information cards if there is any material change in the information and, in any event, at least once each year of the Term, prior to January 1. Contractor will also mail information cards to City residents upon City request and to the Sunnyvale Chamber of Commerce in quantities required by the Chamber.

Contractor will submit drafts of the information cards to City for approval prior to distribution and will incorporate City's comments in the final version that Contractor distributes to the public.

**F. E-mail Access.** Contractor will maintain an E-mail address for correspondence with Waste Generators and provide City with the E-mail address that City may post on Waste Generators' bills.

Contractor will submit service-related information on its web site as of the date of execution by Contractor of this Extended and Second Restated Agreement, and thereafter any new or amended service-related information to City for review and approval prior to posting that material on Contractor's web site.

**G. Response Policy.** Contractor will submit a written policy for City approval describing Contractor's time to respond to Customer correspondence by telephone, email fax, mail or other means.

#### **6.06 Service Complaints**

Contractor is responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Waste Generator complaints relating to service and billing for those services billed by Contractor. Contractor will record in a

separate log all complaints, noting the name, address and telephone number of complaining caller; date and time that the complaint was received; identification of employee receiving complaint; description of complaint and characterization of complaint type (such as missed pickup, spilled trash, noise, etc.); and description of response; and description and date of resolution, all in accordance with Section 1.03E of Exhibit 5.02. Contractor will make available this complaint log for inspection by City during Working Hours. In addition, Contractor will compile a summary statistical table and / or graph of the complaint log and submit the table and / or graph to City each month. Contractor will retain logs for the time required in Section 1.03E of Exhibit 5.02.

Contractor will respond to all complaints from Waste Generators within 8 Working Hours following Waste Generator's giving Contractor notice of the complaint. For example, if Contractor receives complaint of a missed collection at 4:30 p.m., it will respond to the complaint by 12:30 p.m. the next day. Timely response does not excuse Contractor's breach of obligation to provide timely service (such as a missed collection) in the first instance. Despite timely response, City may assess liquidated damages related to Contractor's breach of obligation (such as missed collections).

**6.07 Service Standards: Liquidated Damages for Failure to Meet Standards**

The parties acknowledge that consistent, reliable solid waste collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise to Contractor. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat non-performance as an event of default under Section 11.01, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums

to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Extended and Second Restated Agreement was made.

Contractor

City

Initial Here \_\_\_\_\_

Initial Here \_\_\_\_\_

Contractor will pay (as liquidated damages and not as a penalty) the amount set forth below. City may deduct these amounts from Contractor's Payment:

**Collection Reliability**

- 1 For each failure over 5 annually to timely \$300  
**deliver the following containers:**

carts for Refuse, containers for Residential Recyclable Materials, plastic jugs for oil and containers for used oil filters, and carts for Yardwaste to a **Residential** Waste Generator account in accordance with Sections 1.01A, 1.04I3a and d and 1.04J4 of Exhibit 5.02;

bins for Refuse, carts for Multi-Unit Recyclable Materials or plastic jugs or containers for recycling used oil and oil filters to a **Multi-Unit Dwellings** customer, in accordance with Section 1.05B, 1.05C3a and 1.05C3b, respectively, of Exhibit 5.02;

bins or roll-offs for Refuse and bins or other containers for Commercial/Industrial Recyclable Materials to a **Commercial/Industrial** customer in accordance with Section 1.06B and 1.06E2 of Exhibit 5.02;

- 2 For each failure over 5 annually to timely \$300

**commence service** for collection of:

Refuse, Residential Recyclable Materials and Yardwaste to a new **Residential** Waste Generator account in accordance with Sections 1.04A, B, I and J1 of Exhibit 5.02;

Refuse, and Multi-Unit Recyclable Materials to a new customer at a new **Multi-Unit Residential Premise** in accordance with Sections 1.05A and C1 of Exhibit 5.02;

Refuse or Commercial/Industrial Recyclable Materials to a new **Commercial/Industrial** Waste Generator in accordance with Sections 1.06A1 or E1 of Exhibit 5.02:

- 3 For each failure over 3 annually to **collect** \$300 Refuse, Recyclable Materials, Yardwaste, used oil filters or used oil which has been properly delivered for collection, from an established customer account **on the Scheduled Collection Day** in accordance with the following sections in Exhibit 5.02 -

1.04 (including 1.04A Regular; 1.04B Disabled and Elderly and 1.04C (bulky) & 1.04D (spring and fall) Special; 1.04I Residential "Curbside" Recycling; and 1.04J Yardwaste Recycling),

1.05 (including 1.05A Multi-Unit Refuse and 1.05C Multi-Unit Recycling),

1.06 (including 1.06A Commercial/Industrial Refuse and 1.06E Commercial/Industrial Recycling), and

1.07 (City Facilities)

(together, "**Scheduled Collection Days**"):

- 4 For each failure to **collect** solid waste that \$300 has been properly delivered for collection, from the same customer **on 2 consecutive Scheduled Collection Days** defined in the preceding liquidated damage item (3):

- 5 For each failure over 5 annually to **leave a** \$300

**tag** for a customer when containers or materials are not serviced because they have not been properly delivered for collection in accordance with Section 1.03F of Exhibit 5.02:

- 6 For each failure to leave the **required number of replacement jugs or containers** when oil or oil filters are collected for recycling in accordance with Sections 1.04I4d or 1.05C3b of Exhibit 5.02: \$300

**Collection Quality**

- 7 For each occurrence over 5 annually of tire skidding damage warranting repair to pavement of City streets in contravention of Section 5.11A: \$500

For each occurrence over 5 annually of leaks in contravention of Section 5.11A:

- 8 For each occurrence over 15 of two or more failures in accordance with Section 5.11A with respect to **Multi-Unit Residential Premises or Commercial/Industrial services** for an individual Waste Generator: \$300

to return emptied Containers to their collection point after servicing,

place Containers upright with lids closed and properly secured,

close and secure any gates, doors, enclosures, container lids or (if required by customer) locks opened in the course of providing service;

if required, to secure locks after service;

For example if Contractor fails 15 times to close any Waste Generators' refuse bins, then if Contractor fails to close any of those Waste Generator's bin a second time, Contractor would be assessed \$300 in liquidated damages:

- 9 For each occurrence over 15 annually of \$300

failures in accordance with Section 5.11A with respect to **Residential services**:

to return emptied Containers to their collection point after servicing,

place Containers upright with lids closed and properly secured,

close and secure any gates, doors, enclosures, container lids or (if required by customer) locks opened in the course of providing service and;

retrieve carts moved by others that have been reported to Contractor by a Waste Generator or City.

For example if Contractor fails 15 times to close any Residential Waste Generators' refuse cart, then if Contractor fails to close any Residential Waste Generator's cart a 16<sup>th</sup> time, Contractor would be assessed \$300 in liquidated damages.:

- 10 For each occurrence of excessive **noise** in \$1,000  
accordance with Section 5.11B:
- 11 For each occurrence of **discourteous behavior** \$1,000  
in contravention of Section 5.16F:
- 12 For each failure over 10 annually to timely \$300  
**clean up solid waste spilled** from solid waste  
containers (cans, carts, bins, debris boxes  
or compactors) in accordance with Section  
5.12A:
- 13 For each occurrence over 5 annually of \$500  
collecting solid waste **outside authorized  
hours** in accordance with Section 5.10:
- 14 For each occurrence of wrongfully driving 2 \$300  
or more times onto customer property to  
service containers instead of providing push-  
out service in accordance with account  
subscription in accordance with Section  
1.04B2 of Exhibit 5.02:
- 15 After January 1, 2006, for each failure over \$150  
25 annually to **clean, paint or label any  
Container** in accordance with Section 5.15C or  
repair or replace them in accordance with

Section 5.15D:

**Customer Responsiveness**

- 16 For each failure to timely **respond to a** \$100  
**customer complaint** in accordance with Section  
6.06:
- 17 For each failure to **report customer** \$500  
**complaints** to City as required by Section  
6.06:

**Timeliness of Submissions to City**

- 18 For each failure to timely **submit the report** \$500  
on the monthly audit of billings required by for each  
Section 6.15: day the  
report is  
late
- 19 For each failure to timely **submit the annual** \$500  
**application for adjustment of compensation** for each  
required by Section 8.03: day the  
applica-  
tion is  
late
- 20 For each failure over 10 annually to timely \$300 for  
comply with City's **billing protocol** in each  
accordance with Sections 6.01A and B, and failure  
6.02:

Neither the imposition nor the payment of liquidated damages limits City's right to treat Contractor's failure to meet the performance standards as an Event of Default under Section 11.01.

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or investigation of customer complaints.

Prior to assessing liquidated damages, City will give Contractor notice of its intention to do so accompanied by a list of each incident giving the date and a brief description. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incidents on the list. Contractor may, within 10 days after receiving the notice and list request a meeting with City held by the Director of Public Works. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents on the list. The Director of Public Works will provide Contractor with a written explanation of his or her determination on each incident prior to authorizing City's Finance Department to deduct liquidated damages from payments subsequently due to Contractor.

The parties recognize that Owners of Premises may allege that damage to their pavement is attributable to passing of collection vehicles over pavement in the ordinary course of performing services under this Agreement. City acknowledges that such allegations have in the past frequently proved inaccurate upon investigation, in that the pavement was found to have been built to inadequate thickness, did not meet current building code requirements, or had simply exhausted its useful life. City does not intend to assess liquidated damages for instances of "damage" to private property of the type described in this paragraph.

The parties also recognize that the 64 and 96-gallon carts that Contractor provides to Residential Premises are designed to be mobile and easily moved. From time to time they may be moved by children from their proper locations. City does not intend to assess liquidated damages for instances in which carts are properly placed by Contractor's employees but subsequently moved by others. Upon receiving notice of this occurring from the owner or occupant of Premises or from City, and/or upon its drivers' noticing this having occurred, Contractor will promptly retrieve the carts and redistribute them back to the proper locations in front of the Premises to which they are assigned.



**6.08 City's Right to Direct Termination of Service to Premises**

City may direct Contractor to suspend or terminate solid waste collection services from any Premises if the Owner or occupant thereof (or other party responsible for payment of City's utility bills) is delinquent in payment of such bills. City indemnifies and holds Contractor harmless from any liability or costs associated with Contractor's suspending or terminating pursuant to directions of City under this Section.

Contractor will promptly implement City directions to suspend or terminate service.

**6.09 City's Right To Change Scope of Work; Pilot Programs**

Without amending this Agreement, City may direct Contractor to cease performing one or more of the types of solid waste collection service described in Article 5, may direct Contractor to modify the scope of one or more of those services, or may direct Contractor to perform additional solid waste collection service, including pilot programs and innovative services that may entail new collection methods, different types of services and/or new requirements for Waste Generators. Contractor will promptly and cooperatively comply with City's directions.

If those changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in Contractor's Payment will be made in accordance with Section 8.06. Contractor will continue to perform the new or changed service while the appropriate adjustment in compensation is being determined.

**6.10 Title to Solid Waste**

**A. General.** Solid waste collected by Contractor is the property of Contractor from the time it is placed into Contractor's collection vehicle until it has been properly delivered to the Disposal Site or Transfer Station, at which time it becomes the property of the owner or operator of the Disposal Site or Transfer Station.

**B. Commercial/Industrial Recycling.** Recyclable Material collected from Commercial/Industrial Waste Generators is the property of Contractor (subject to City's interest in the revenues to be received from their sale) from the time it is placed in Contractor's collection vehicle until it is sold or properly delivered to a recycling operation, including the Transfer Station.

**C. Residential and Multi-Unit Recyclables/Yardwaste Recycling.** Recyclable Material (including Yardwaste) collected as part of programs servicing Residential Premises and Multi-Unit Residential Premises is the property of Contractor (subject to City's interest in the revenues to be received from their sale) from the time it is placed in Contractor's collection vehicle until it is sold or properly delivered to a recycling operation, including the Transfer Station.

#### **6.11 Non-Discrimination**

Contractor will not discriminate in the provision of service (including with respect to any City employee working with Contractor) or the employment of persons engaged in performance of this Agreement (including application for that employment) on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, age, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

#### **6.12 Change in Collection Schedule**

Contractor will obtain written approval from City prior to any change in collection operations that results in a change in the day on which solid waste collection occurs at Residential Premises. City approval will not be withheld unreasonably. Contractor will comply with the requirements in Section 1.04G of Exhibit 5.02 regarding notice to customers of changes in operations.

#### **6.13 Transition to Next Contractor**

If Contractor is not awarded a franchise to continue to provide solid waste collection services following termination or expiration of this Agreement, Contractor will cooperate fully

with City and the subsequent contractors to assure an orderly and effective transition. Cooperation includes agreeing to sell collection bins and containers to the next contractor at their fair market value and providing route maps, route lists and other similar information to City for the next service provider.

In connection therewith, Contractor acknowledges that the provisions of Public Resources Code Sections 49520-49523 have no application to this Agreement and agrees, to the extent such sections may have application, to waive whatever rights they may afford.

#### **6.14 Report of Accumulation of Solid Waste: Unauthorized Dumping**

Contractor will direct its drivers to note (1) the addresses of any Premises at which they observe that solid waste is accumulating and is not being delivered for collection and (2) the address, or other location description, at which solid waste has been dumped in an apparently unauthorized manner. Contractor will deliver the address or description to City within 8 Working Days of its observation.

#### **6.15 Audit of City Billings**

Contractor will audit City's billings to Waste Generators under Section 6.01A, including:

- (1) ensuring that component rates match onsite for service inventory and frequency;
- (2) adjusting service levels as needed (for example, too much refuse or garbage service, too little Commercial/Industrial cardboard service, etc.);
- (3) verifying that additional cans are being recorded and reported to City properly;
- (4) identifying addresses such as residences, businesses in strip malls or multi-tenant industrial complexes that set out materials without subscribing to service and establishing an account;
- (5) verifying if rear-yard service is still being provided or needed;
- (6) verifying that push-out service is being provided and all services are coded properly for push-out;
- (7) auditing recycling services: multi-family carts, multi-family oil boxes, split-carts, Commercial/Industrial

cardboard bins; verifying that container exists at address, being serviced, correcting type and container number;

- (8) noting any needed repairs, graffiti, bins that need cleaning or repainting, and unauthorized solid waste containers;
- (9) enforcement information, including:
  - a. overflowing Containers,
  - b. messy enclosures,
  - c. Hazardous Waste,
  - d. odor,
  - e. disease vectors,
  - f. severely damaged enclosure.

The purpose of the audits is to determine (1) if services and containers conform to standards and (2) that the amount that City is billing each Waste Generator is correct in terms of the level of service (i.e., frequency of collection, size of container, location of container) being provided to that Waste Generator by Contractor. Contractor will audit 1/6th of the customer accounts each month and submit to City a written report on that audit by the 15th day of the following month, so that City will receive reports on a monthly basis which will cover the entire list of customers twice each year.

#### **6.16 Prevailing Wages**

The parties acknowledge that the services provided by Contractor do not constitute a "public work" and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder. However, until and unless otherwise directed by City, Contractor will pay its field and shop employees wages and benefits equivalent to the general prevailing rate of wages applicable to the work to be done, as determined by the Director of the California Department of Industrial Relations. Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the corresponding prevailing wage rate. Future determinations of prevailing wages in relevant job classifications will be obtained from the Department by City and provided to Contractor from time to time.

City may presume that wage rates paid by Contractor in excess of the prevailing wages determined by the Department of Industrial Relations are unreasonable for purposes of